

Namibia

Namibia is taking steps to implement the aspects of the terms of reference (OECD, 2021^[1]) (ToR) for the transparency framework and to commence administrative preparations to ensure that it establishes an information gathering process (ToR I.A) and that information on rulings will be identified and exchanged in a timely manner (ToR II.B). Namibia receives two recommendations on these points for the year in review.

In the prior year report, Namibia had received the same recommendations. As they have not been addressed, the recommendations remain in place.

Namibia can legally issue four types of rulings within the scope of the transparency framework.

In practice, Namibia issued no rulings within the scope of the transparency framework.

As no exchanges took place, no peer input was received in respect of the exchanges of information on rulings received from Namibia.

Information gathering process (ToR I.A)

845. Namibia can legally issue the following four types of rulings within the scope of the transparency framework: (i) cross-border unilateral APAs and any other cross-border unilateral tax rulings (such as an advance tax ruling) covering transfer pricing or the application of transfer pricing principles; (ii) rulings providing for unilateral downward adjustments; (iii) permanent establishment rulings; and (iv) related party conduit rulings.

Past rulings (ToR I.A.1.1, I.A.1.2, I.A.2.1, I.A.2.2)

846. For Namibia, past rulings are any tax rulings issued prior to 1 March 2020. However, there is no obligation for Namibia to conduct spontaneous exchange information on past rulings.

Future rulings (ToR I.A.1.1, I.A.1.2, I.A.2.1)

847. For Namibia, future rulings are any tax rulings within scope that are issued on or after 1 March 2020.

848. No rulings were issued by Namibia during the future rulings period in the year in review. However, in the prior year's and 2020 peer review report, it was determined that Namibia did not yet have processes in place to ensure the implementation of the obligations relating to the transparency framework. During year 2021, Namibia started to develop a process, but did not yet implement such a process, and therefore the recommendation remains in place.

Review and supervision (ToR I.A.3)

849. In the prior year's peer review report, it was determined that Namibia did not yet have a review and supervision mechanism under the transparency framework. During the year in review, Namibia did not implement such a review and supervision mechanism, and therefore the recommendation remains in place.

Conclusion on section A

850. Namibia is recommended to ensure that it has put in place an effective information gathering process to identify all relevant future rulings and all potential exchange jurisdictions and to implement a review and supervision mechanism, as soon as possible (ToR I.A).

Exchange of information (ToR II.B)

851. In the prior years' peer review reports, it was noted that although Namibia does not have an explicit domestic legal basis to exchange information spontaneously, international agreements can override secrecy provisions prohibiting the exchange of information. Therefore, Namibia will be able to exchange information on rulings with jurisdictions that are treaty partners. Furthermore, there are no legal or practical impediments that prevent the spontaneous exchange of information on rulings as contemplated in the Action 5 minimum standard.

852. Namibia has international agreements permitting spontaneous exchange of information, including: (i) the *Multilateral Convention on Mutual Administrative Assistance in Tax Matters: Amended by the 2010 Protocol* (OECD/Council of Europe, 2011^[2]) ("the Convention") which entered into force in 2021, and (ii) bilateral agreements in force with 11 jurisdictions.¹

Completion and exchange of templates (ToR II.B.3, II.B.4, II.B.5, II.B.6, II.B.7)

853. In the prior year's peer review report, it was determined that Namibia did not yet have a process to complete the templates on all relevant rulings, to make them available to the Competent Authority for exchange of information, and to exchange them with relevant jurisdictions. During the prior year, the

Exchange of Information Unit within the Namibia Revenue Agency has been set up and Namibia started to develop a process for the spontaneous exchange of information on rulings. However, as Namibia is still in a process of implementing a process for exchange of information, the previous years' recommendation remains in place.

854. During the year in review, no exchanges were required to take place and no data on the timeliness of exchanges is reported.

Conclusion on section B

855. Namibia is recommended to develop a process to complete the templates for all relevant rulings and to ensure that the exchanges of information on rulings occur in accordance with the form and timelines under the transparency framework going forward (ToR II.B).

Statistics (ToR IV.D)

856. As no rulings were issued, no statistics can be reported.

Matters related to intellectual property regimes (ToR I.A.1.3)

857. Namibia does not offer an intellectual property regime for which transparency requirements under the Action 5 Report (OECD, 2015^[3]) were imposed.

Summary of recommendations on implementation of the transparency framework

Aspect of implementation of the transparency framework that should be improved	Recommendation for improvement
Namibia does not yet have the necessary information gathering process in place.	Namibia is recommended to ensure that it has put in place an effective information gathering process to identify all relevant past and future rulings and all potential exchange jurisdictions and to implement a review and supervision mechanism, as soon as possible. This recommendation remains unchanged since the 2020 and 2021 peer reviews.
Namibia does not yet have a process to complete the templates on relevant rulings, to make them available to the Competent Authority for exchange of information, and to exchange them with relevant jurisdictions.	Namibia is recommended to develop a process to complete the templates for all relevant rulings and to ensure that the exchanges of information on rulings occur in accordance with the form and timelines under the transparency framework going forward. This recommendation remains unchanged since the 2020 and 2021 peer reviews.

References

- OECD (2021), *BEPS Action 5 on Harmful Tax Practices - Terms of Reference and Methodology for the Conduct of the Peer Reviews of the Action 5 Transparency Framework*, OECD Publishing, Paris, <https://www.oecd.org/tax/beps/beps-action-5-harmful-tax-practices-peer-review-transparency-framework.pdf>. [1]
- OECD (2015), *Countering Harmful Tax Practices More Effectively, Taking into Account Transparency and Substance, Action 5 - 2015 Final Report*, OECD/G20 Base Erosion and Profit Shifting Project, OECD Publishing, Paris, <https://doi.org/10.1787/9789264241190-en>. [3]
- OECD/Council of Europe (2011), *The Multilateral Convention on Mutual Administrative Assistance in Tax Matters: Amended by the 2010 Protocol*, OECD Publishing, Paris, <https://doi.org/10.1787/9789264115606-en>. [2]

Note

¹ Participating jurisdictions to the Convention are available here: www.oecd.org/tax/exchange-of-tax-information/convention-on-mutual-administrative-assistance-in-tax-matters.htm. Namibia also has bilateral agreements with Botswana, France, Germany, India, Malaysia, Mauritius, Romania, Russia, South Africa, Sweden, United Kingdom.



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